

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IVELISSE G. RODRIGUEZ and )  
WILFREDO RODRIGUEZ, )  
individually and on behalf of the classes )  
defined herein, ) 08 C 1723  
)  
plaintiffs, ) Judge Coar  
)  
vs. ) Magistrate Judge Mason  
)  
CAPITAL ONE HOME LOANS, LLC; )  
HSBC MORTGAGE SERVICES, INC.; )  
MORTGAGE ELECTRONIC )  
REGISTRATION SYSTEMS; and )  
DOES 1-5, )  
) **JURY DEMAND**  
Defendants. )

**AMENDED COMPLAINT - CLASS ACTION**

**INTRODUCTION**

1. Plaintiffs, on behalf of themselves and the classes defined below, bring this action for rescission of a “subprime” mortgage loan and damages for multiple violations of the Truth in Lending Act, 15 U.S.C. §1601 et seq. (“TILA”), and implementing Federal Reserve Board Regulation Z, 12 C.F.R. part 226. Plaintiffs also sue for damages resulting from racial and/or ethnic discrimination in mortgage lending, in violation of the Civil Rights Act, 42 U.S.C. Sect. 1981, the Fair Housing Act, 42 U.S.C. Sect. 3601, et seq. (“FHA”) and the Equal Credit Opportunity Act, 15 U.S.C. Sect. 1691, et seq. (“ECOA”).

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (general federal question), 1337 (interstate commerce), 15 U.S.C. §1640 (TILA) and 1367 (supplementary jurisdiction).

3. Defendants transact business in the District and are deemed to reside here.

### **PARTIES**

4. Plaintiffs Ivelisse and Wilfredo Rodriguez own and reside in a home with their four daughters at 4618 West Dickens Avenue, Chicago, Illinois, 60439. They are high-school educated, ordinary consumers. Plaintiffs are Hispanic or Latino.

5. Defendant Capital One Home Loans, LLC (“Capital One”), is a corporation with offices located at 7311 West 132<sup>nd</sup> Street, Suite 300, Overland Park, Kansas, 66213. On information and belief, it is headquartered in McLean, Virginia. Capital One is engaged in the business of originating, high-cost, sub-prime, residential mortgage loans. It does business in Illinois. In 2006, it made more than 26 loans per year.

6. Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”) is a corporation that holds title to mortgages, as nominee. It does business in Illinois. Its registered agent and office are CT Corporation System, 208 South LaSalle Street, Suite 814, Chicago, Illinois, 60604.

7. Defendant HSBC Mortgage Services, Inc. (“HSBC”), is a Delaware Corporation that is engaged in the business of purchasing, holding and servicing sub-prime residential mortgage loans. It does business in Illinois. Its registered agent and office are CT Corporation System, 208 South LaSalle Street, Suite 814, Chicago, IL, 60604.

8. HSBC is the current servicer of plaintiffs’ loan. On information and belief, HSBC is also the legal and/or beneficial owner of plaintiffs’ loan.

9. If HSBC is not the owner of plaintiffs' loan, the current actual owner(s) is/are named as Does 1-5.

**Misleading/Non-Existent Disclosure of Loan Terms**

10. Prior to January, 2006, plaintiffs had a credit card account with a Capital One affiliate. On one of the monthly statements that plaintiffs received was an advertisement for account holders to take out a home equity loan with Capital One. On information and belief, the advertisement mentioned a 7.16% fixed Annual Percentage Rate ("APR") and indicated that plaintiffs had been "pre-approved" for mortgage financing.

11. When Ivelisse Rodriguez called the phone number given on the account statement on or about January 5, 2006, she reached Ben Jacobs at Capital One, who promised her that he could consolidate and pay off she and her husband's debts and "save them money" on a refinance.

12. In that conversation, Jacobs took plaintiffs' financial information as well as, on information and belief, ran plaintiffs' credit profiles, then told Mrs. Rodriguez that she and her husband qualified for a loan. At Jacobs' request, plaintiffs later sent documents verifying their income along with a signed authorization to release information.

13. On information and belief, Jacobs completed plaintiffs' computerized loan application over the phone during the initial conversation.

14. On or about January 5, 2006, Capital One mailed plaintiffs a package containing preliminary disclosures for a loan (cover letter attached as Exhibit A).

15. Plaintiffs needed and used the loan for personal, family or household purposes, namely, refinancing of prior debt incurred for such purposes.

16. The loan was closed on or about January 18, 2006. At that time, plaintiffs jointly owned the home, and both signed the new mortgage, which was in favor of MERS (Exhibit B).

17. “Closing” occurred as follows. Plaintiffs received, via Express Mail or other overnight courier, a single set of closing documents with instructions (Exhibit C) to sign them, take specified ones to a notary for notarization, and send the signed documents back to Capital One via overnight courier. Plaintiffs followed these and other Capital One, written instructions.

18. No second or duplicate set of closing documents was included in the overnight package for plaintiffs to review and keep for their records. Referring to these two documents, another written instruction sheet from Capital One told plaintiffs to “retain” the HUD-1 Settlement Statement and a copy of the note (Exhibit D). The instructions stated that “these are the primary documents of your closing package” and that “you may need to reference these documents” in the future. (Id.). In order to view or obtain copies of any other closing documents, plaintiffs had to access Capital One’s website within 90 days.

19. However, only one copy of the note, i.e., the copy plaintiffs were instructed to sign and return, was actually enclosed in the package. A third, written instruction sheet from Capital One, conflicting with the second, informed plaintiffs that “the note will be forwarded by your loan officer” (Exhibit E).

20. In fact, plaintiffs never received a copy of their note and, to this day, do not fully know or understand the structure and terms of the loan program Capital One put them in. On information and belief, plaintiffs have a three-and-a-half year, adjustable rate, interest-only loan with an initial interest rate of 8.99% and an initial APR of 10.76%.

21. Plaintiffs had web access at the time they obtained the loan but lost it thereafter. Plaintiffs recently tried to access their closing documents on Capital One's website but were no longer allowed access (Exhibit F).

22. Besides a truncated copy of a HUD-1 Settlement Statement (Exhibit G), a minimum of three pages of instructions from Capital One (Exhibits C, D and E), and a copy of the ARM Handbook, plaintiffs retained only one other document from the closing package they received, namely, a single, executed copy of a federal Notice of Right to Cancel form (Exhibit H), which was prepared using the wrong form, the Federal Reserve Board's model form H9, as explained below.

23. Among other documents that were not provided to plaintiffs in a form they could keep was a final TILA Disclosure Statement.

24. Capital One made plaintiffs a \$351,000 loan. On information and belief, the loan amount was 100% of the value of plaintiffs' home. In the alternative, Capital One inflated the appraised value of plaintiffs' home. At this time, plaintiffs do not have the documents that would indicate how much Capital One or its agent appraised their home for.

25. Plaintiffs' HUD-1 Settlement Statement (Exhibit G) indicates that they were charged \$8,527.45 in lender-imposed settlement charges (line 103), including a \$300 "Underwriting" fee (line 813), a \$250 "Processing" fee (line 814), a \$250 "Document Preparation" fee (line 815) and a \$275 "Settlement" fee (line 1101).

26. On information and belief, Capital One gave plaintiffs a loan with a higher interest rate and a higher monthly payment amount than plaintiffs' previous loan.

27. In addition, Capital One imposed a three-year prepayment penalty on plaintiffs' loan (see Exhibit I), even after plaintiffs requested a one- or a two-year prepayment penalty.

28. On information and belief, plaintiffs' interest rate is scheduled to enter its adjustable phase next year. Plaintiffs have struggled to afford the mortgage payment and will certainly be unable to afford the higher payment amounts once the interest rate starts increasing. As of the date of this filing, plaintiffs are current on payments.

**Discrimination on Account of Race/Ethnicity:  
Racial Targeting or "Reverse Redlining"**

29. Capital One intentionally and disproportionately targeted plaintiffs for a high cost, predatory loan on account of their race and/or ethnicity. Capital One has a policy and practice of targeting Latinos, African-Americans and geographical communities where minorities predominate for its high cost, subprime, residential mortgage loans. This practice is effectuated, in part, through Capital One's direct-mail advertising, marketing and loan origination practices.

30. Alternatively, Capital One's advertising, marketing, origination and other practices had an adverse, disparate impact on plaintiffs in that they received a predatory, high cost loan because of their race and/or ethnicity or the predominant race/ethnicity of their geographical neighborhood. Capital One was aware of this impact but continued its lucrative, discriminatory practices anyway.

31. Home Mortgage Disclosure Act ("HMDA") data reported by Capital One for loans it originated in the Chicago area in 2006, the year in which it originated plaintiffs' loan,

indicate that 100% of Capital One's loans (for which race of borrower was reported) were loans to minorities; not a single loan was made to Caucasian borrowers.

32. Plaintiffs were qualified for a mortgage loan.

33. As a result of Capital One's policies and/or practices of targeting or reverse redlining based on race and/or ethnicity, plaintiffs received a loan with a higher APR, higher closing costs and higher total finance charges than they actually qualified for.

34. There was no legitimate business reason for plaintiffs to have been disproportionately targeted, on account of their race and/or ethnicity, for a high cost, predatory loan.

35. Alternative advertising, marketing, origination and other business practices existed that would not have resulted in an adverse, disparate impact based on race and/or ethnicity.

36. Plaintiffs did not discover that they had been targeted and discriminated against until after they met with their current counsel in April, 2008.

37. Any and all statutes of limitations relating to Capital One's discrimination were tolled under the discovery rule, fraudulent concealment, equitable tolling and other applicable tolling doctrines.

### **Subsequent Loan History**

38. In February, 2006, Capital One notified plaintiffs that it had assigned the servicing rights to the loan to HSBC (Exhibit J). As a servicer, HSBC claims certain rights in the loan, including the right to receive payments, to report to credit bureaus and to pursue foreclosure as a means of enforcing payment. HSBC is, therefore, joined as a necessary party.

39. On information and belief, HSBC also owns plaintiffs' loan (Exhibit K).

40. In the event HSBC does not own plaintiffs' loan, the actual owner(s) is/are named as Does 1-5. Actual ownership is not a matter of public record.

41. As the holder of title to the mortgage that resulted from the transaction, MERS also claims certain rights in plaintiffs' loan, including the rights to transfer interests in, and to foreclose on, the mortgage. Therefore, MERS is joined as a necessary party.

42. Plaintiffs may amend or add allegations and/or legal claims to their complaint once they receive, through discovery, a complete set of the closing documents they signed for the loan. At present, these and other documents are in defendants' sole possession and control.

#### **COUNT I - TRUTH IN LENDING ACT – INDIVIDUAL CLAIM**

43. Plaintiffs incorporate paragraphs 1-42. This count is against all defendants. MERS is a necessary party.

#### **RIGHT TO RESCIND**

44. Because the transaction was secured by plaintiffs' home, and was not entered into for purposes of the initial acquisition or construction of that home, it was subject to the right to cancel provided by 15 U.S.C. Sect. 1635 and 12 C.F.R. Sect. 226.23. Sect. 226.23 provides:

**(a) Consumer's right to rescind.**

**(1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section.[fn]47**

**(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed**

for telegraphic transmission or, if sent by other means, when delivered to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures,[fn]48 whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the Act. [15 U.S.C. §1635(f)]

(4) When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b) **Notice of right to rescind.** In a transaction subject to rescission, a creditor shall deliver 2 copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

(2) The consumer's right to rescind the transaction.

(3) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(4) The effects of rescission, as described in paragraph (d) of this section.

(5) The date the rescission period expires. . . .

(f) **Exempt transactions.** The right to rescind does not apply to the following:

(1) A residential mortgage transaction [defined in 15 U.S.C. §1602(w) as one where a "security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of such dwelling"].

(2) A credit plan in which a state agency is a creditor.

## **GROUNDΣ FOR RESCISSION**

45. In connection with the loan, Capital One failed to provide the required financial disclosures, in violation of 15 U.S.C. Sect. 1637, 12 C.F.R. Sect. 226.18 and the corresponding sections of the Official Federal Reserve Board (“FRB”) Commentary on Regulation Z, and failed to provide clear and conspicuous notice of plaintiffs’ federal right to rescind the loan.

46. Regulation Z specifically requires that these disclosures be provided to the consumer in a form that he or she can keep. This applies to transactions any part of which are conducted electronically.

47. Capital One did not provide plaintiffs with a final TILA Disclosure Statement in a form that they could keep.

48. Capital One provided plaintiffs with only one federal Notice of Right to Cancel in a form that they could keep (Exhibit H), instead of the four required (i.e., two per mortgagor) by Sect. 226.23(b) (see above).

49. In addition, the single, paper copy of the federal Notice of Right to Cancel provided to plaintiffs (Exhibit H) was provided using the wrong form, the Federal Reserve Board’s H9 form, which is appropriate only when an existing or immediately prior mortgage creditor is providing additional or “increased” credit to the consumer. Capital One was a new mortgage creditor vis-à-vis plaintiffs, and, therefore, the H8 was the appropriate model form. The H9 was misleading in this context because it states that plaintiffs could only rescind the “increase of credit” when, in fact, they could rescind the entire extension of credit.

50. Further, the TILA Disclosures and Notice of Right to Cancel were all obfuscated and otherwise rendered less than clear and conspicuous by the combination of Capitol

One's (a) failure to provide plaintiffs with copies of them in a form they could keep and (b) its instructions to plaintiffs that "the primary loan documents" were the note and the HUD-1 Settlement Statement, i.e., not the TILA Disclosures (Exhibit D). In fact, retained TILA Disclosures and Notice of Right to Cancel forms are crucial to the consumers' understanding of the terms of the credit transaction and to their ability to effectively exercise their rights.

51. Any one of these violations alone entitles plaintiffs to rescind the loan.
52. Notices of rescission were sent to all defendants on March 22, 2008 (Exhibit L).
53. The loan has not been rescinded.
54. Under 15 U.S.C. Sect. 1641(c), the right to rescind may be exercised against "any assignee."
55. In addition, 15 U.S.C. Sect. 1635(g) provides:

**Additional relief**

**In any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under section 1640 of this title for violations of this subchapter not relating to the right to rescind.**

WHEREFORE, plaintiffs request that the Court enter judgment in favor of plaintiffs and against defendants for:

- a. A judgment voiding plaintiffs' mortgage, capable of recordation in the public records, and binding on defendants;
- b. Refund of all finance charges, as required by TILA rescission;
- c. Statutory damages for failure to rescind, if appropriate;
- d. Attorney's fees, litigation expenses and costs; and

e. Such other or further relief as the Court deems appropriate.

### **COUNT II – TRUTH IN LENDING ACT – CLASS CLAIMS**

56. Plaintiffs incorporate paragraphs 1-55. This count is against all defendants. MERS is a necessary party.

57. Capital One regularly closed residential mortgage refinancing transactions in the manner described above without providing consumers, in a form that they could keep, with (a) the TILA Disclosure Statement or (b) the requisite number of Notice of Right to Cancel forms, (c) while at the same time instructing consumers that “the primary loan documents” were the HUD-1 Settlement Statement and the Note, i.e., not the TILA disclosures. The instruction sheet in Exhibit D is a standard form document, used by Capital One in thousands of “ghost” closings.

58. Failing to provide either of these disclosures in a form that the consumer can keep, and suggesting to the consumer that these disclosures are not “primary” to the transaction, violates TILA, Regulation Z and the Official FRB Commentary on Regulation Z.

59. In addition, on information and belief Capital One frequently used the H9 form in credit situations that called for the H9. Capital One’s H9 (Exhibit H) form is a standard form document.

60. Use of the wrong model rescission form violates TILA, Regulation Z and the FRB Commentary.

### **CLASS ALLEGATIONS**

61. Plaintiffs sue on their own behalf and on behalf of two classes, A and B. Class A consists of (a) all natural persons with Illinois, Indiana and Michigan residences; (b) who entered into a residential mortgage credit transaction with Capital One; (c) in which Capital

One did not provide the TILA Disclosure Statement, the required number of federal Notices of Right to Cancel or both in a form that the consumer could keep; (d) in which Capital One provided an instruction that the “primary closing documents” were the HUD-1 and the note; and (d) the loan was closed on or after a date three years prior to the filing of this action.

62. Class B consists of (a) all natural persons with Illinois, Indiana and Michigan residences who (b) entered into a residential mortgage credit transaction with Capital One (c) in which Capital One provided the H9 model rescission form when the transaction was not one in which the consumers’ previous creditor was providing additional credit and (d) the loan was closed on or after a date three years prior to the filing of this action.

63. The classes are so numerous that joinder is impracticable. Plaintiffs do not know at present the exact size of the proposed classes or the identities of the proposed class members, since such information is in the sole possession and control of defendants. But plaintiffs believe that each class encompasses several thousand individuals. On information and belief, there are more than 50 members of each class.

64. There are questions of law and fact common to the members of the classes, which common questions predominate over any questions that affect only individual class members. The predominant common questions include whether:

- (a) Capital One regularly closed loans in the manner in which it closed plaintiffs’ loan, using the same procedures and instruction sheets;
- (b) Capital One’s manner of providing/not providing the required TILA disclosures constitutes clear and conspicuous disclosure under TILA; and whether
- (c) providing notice of the federal right to cancel using the H9 model rescission form in transactions where Capital One is a new creditor violates TILA.

65. Plaintiffs' claims are typical of the claims of the class members and do not conflict with them in any way. All are based on the same factual and legal theories.

66. Plaintiffs will fairly and adequately represent the interests of the class members. They are committed to the vigorous prosecution of the class claims, and they have retained counsel experienced in the prosecution of TILA cases and class actions.

67. A class action is superior to other alternative methods of adjudicating this dispute. Individual cases are not economically feasible. A class action concerning the issues in this case does not create any problems of manageability.

68. In the alternative, defendants have acted or refused to act on grounds generally applicable to the classes, thereby making appropriate the Court's rendering of corresponding declaratory relief with respect to each class as a whole.

WHEREFORE, plaintiffs request that the Court enter judgment in favor of plaintiffs and the class and against defendants for:

- a. A declaration that class members have the right and the option to rescind, should they choose to exercise that right upon receiving proper notice;
- b. Attorney's fees, litigation expenses and costs of suit; and
- c. Such other or further relief as the Court deems proper.

### **COUNT III – CIVIL RIGHTS ACT**

69. Plaintiffs incorporate paragraphs 1-42. This count is against defendant Capital One.

70. In violation of 42 U.S.C. Sect. 1981, Capital One purposefully discriminated against plaintiffs because of their race in the manner set forth above.

Alternatively, Capital One was aware of the adverse, discriminatory effects of its practices on plaintiffs and disregarded that knowledge in the pursuit of profits.

WHEREFORE, plaintiffs request that the Court enter judgment for:

- a. Actual, punitive and other appropriate damages;
- b. Injunctive relief;
- c. Attorney's fees and costs; and
- d. Such other or further relief as the Court deems appropriate.

**COUNT IV – FAIR HOUSING ACT**

71. Plaintiffs incorporate paragraphs 1-42. This count is against defendant Capital One.

72. Capital One's targeting of plaintiffs on account of their race and/or ethnicity for a high cost loan violated the FHA, 42 U.S.C. Sect. 3605. Alternatively, Capital One's marketing and loan origination practices had an adverse, discriminatory effect on plaintiffs due to their race and/or ethnicity.

WHEREFORE, plaintiffs request that the Court enter judgment for:

- a. Actual, punitive and other appropriate damages;
- b. Injunctive relief;
- c. Attorney's fees and costs; and
- d. Such other or further relief as the Court deems appropriate.

**COUNT V – EQUAL CREDIT OPPORTUNITY ACT**

73. Plaintiffs incorporate paragraphs 1-42. This count is against defendant Capital One.

74. Capital One's targeting of plaintiffs on account of their race and/or ethnicity for a high cost loan violated the ECOA, 15 U.S.C. Sect. 1691. Alternatively, Capital One's marketing and loan origination practices had an adverse, discriminatory effect on plaintiffs due to their race and/or ethnicity.

WHEREFORE, plaintiffs request that the Court enter judgment for:

- a. Actual, punitive and other appropriate damages;
- b. Injunctive relief;
- c. Attorney's fees and costs; and
- d. Such other or further relief as the Court deems appropriate.

Respectfully submitted,

s/Al Hofeld, Jr.  
Al Hofeld, Jr.

Al Hofeld, Jr.  
LAW OFFICES OF AL HOFELD, JR., LLC  
and The Social Justice Project,  
208 S. LaSalle Street, Suite #1650  
Chicago, Illinois 60604  
Phone - (312) 345-1004  
Fax - (312) 346-3242  
[al@alhofeldlaw.com](mailto:al@alhofeldlaw.com)

**JURY DEMAND**

Plaintiffs demand trial by jury.

s/Al Hofeld, Jr.  
Al Hofeld, Jr.

**NOTICE OF LIEN**

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards.

s/Al Hofeld, Jr.  
Al Hofeld, Jr.

Al Hofeld, Jr.  
LAW OFFICES OF AL HOFELD, JR., LLC  
and The Social Justice Project,  
208 S. LaSalle Street, Suite #1650  
Chicago, Illinois 60604  
Phone - (312) 345-1004  
Fax – (312) 346-3242  
[al@alhofeldlaw.com](mailto:al@alhofeldlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on May 12, 2008, I electronically filed the foregoing Amended Complaint with the Clerk of the Court using the ECF system, which sent electronic notification of the filing on the same day to:

Stewart Theodore Kusper ([stewart.kusper@kattenlaw.com](mailto:stewart.kusper@kattenlaw.com))

Linda Beth Dubnow ([ldubnow@mcguirewoods.com](mailto:ldubnow@mcguirewoods.com))

BeLinda I. Mathie ([belinda.mathie@kattenlaw.com](mailto:belinda.mathie@kattenlaw.com),[ecfdocket@kattenlaw.com](mailto:ecfdocket@kattenlaw.com))

Daniel Philip Bubar ([dbubar@mcguirewoods.com](mailto:dbubar@mcguirewoods.com))

s/Al Hofeld, Jr.

# **EXHIBIT A**

January 5, 2008

Capital One Home Loans, LLC  
7311 West 12th Street, Suite 300  
Overland Park, Kansas 66213  
Phone # 800-718-4486 Fax # 920-900-3456

Ivelisse G. Rodriguez and Wilfredo Rodriguez  
4618 W Dickens Avenue  
Chicago, IL 60639

**RE: INITIAL DISCLOSURES**

Enclosed are the initial disclosures for your loan with Capital One Home Loans, LLC. Please keep these documents for your records.

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR APPLYING FOR A MORTGAGE**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who applies for or obtains a mortgage account.

What this means for you: When you apply for a mortgage, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

Thank you and if you should have any questions, please contact me at this toll free number: 1-888-718-4486, or [ben.jacobs@capitalonehomeloans.com](mailto:ben.jacobs@capitalonehomeloans.com)

Sincerely,

*Ben Jacobs*  
Loan Consultant

Encl:

FACTA Notice To Home Loan Applicant  
Privacy Statement  
Truth-in-Lending  
Good Faith Estimate  
Transfer of Servicing Disclosure  
Right to Receive Appraisal

Consumer Handbook on Adjustable Rate Mortgages attached. Please read.

ARM Disclosure

## **EXHIBIT B**

Doc# 0604-21023 fee \$34.00  
Date: 02/10/2006 12:53 PM Pg: 1 of 26  
Cook County Recorder of Deeds  
TRMSP FEE \$10.00 Applied

Prepared By:  
Jenny Schwartz  
1311 W. 132nd Street Ste 300  
Overland Park, KS 66210

\_\_\_\_\_  
[Sign Above This Line For Recording Date]

## MORTGAGE

MON 1001032-2006001231-4

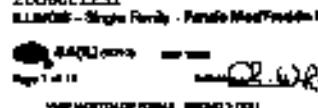
29/04/2006  
Recording Requested by:  
When Recorded Return To:  
US Recordings, Inc.  
2820 Country Drive Ste 201  
St. Paul, MN 55117

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 18.

(A) "Security Instrument" means this document, which is dated January 18, 2006 together with all addenda to this document.  
(B) "Borrower" & Ivelisse Rodriguez and Wilfredo Rodriguez, Wife & Husband,  
As Joint Tenants

Borrower is the Mortgagor under this Security Instrument.  
(C) "MERS" is Mortgage Electronic Registration System, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagor under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Pbil. #44541-2026, tel. (866) 475-MERS.

2006001231 2006001231 0  
E-Sign - Single Party - Remote Notary Mac Uniform Participation with MERS Form 3814-081  
  


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# **EXHIBIT C**

## **THE ATTACHED DOCUMENTS MUST BE NOTARIZED:**

- Deed of Trust/Mortgage
- Signature Affidavit(s)
- Affidavit as to Real Estate
- Compliance Agreement
- Correction Agreement
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_

## **INSTRUCTIONS TO THE NOTARY PUBLIC:**

- Please DO NOT sign as a witness.
- Please be sure your stamp and/or seal are legible and do not cover any type on the document being notarized.
- Complete the Notary Public Compliance Information document.

## **EXHIBIT D**

# **YOUR COPIES**

Please retain the following documents inside your Capital One Home Loans folder for your records:

- Settlement Statement
- Note

These are the primary documents of your closing package. You may need to reference these documents for future refinance or purchase transactions.

If you would like to view or print copies of your complete closing package, please visit our website at [www.capitalonehomeloans.com](http://www.capitalonehomeloans.com) and follow these instructions:

- In the right hand corner of the home page, click on "Log In".
- Enter your loan number and password. Your 10 digit loan number can be found on the first page of the Settlement Statement under item number 7. The password is the last 6 digits of your social security number.
- Click on "Log In" again.
- Follow the prompts to download and print your closing documents.

## **EXHIBIT E**

**THE NOTE WILL BE  
FORWARDED BY YOUR  
LOAN OFFICER**

**Capital One  
Settlement Services,  
LLC**

**THANK YOU!**

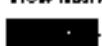
# **EXHIBIT F**

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## Home Loans

[Home Loans Home](#) || [Home Equity](#) || [Debt Consolidation](#) || [New Home Purchase](#) || [Refinance](#) || [Our Loan Consultants](#)

**Our customers lower their payments an average of \$140 a month with**


[View home loan application status](#)

### Calculators

[What's my payment?](#)[How much can I save?](#)[View all calculators](#)

#### Home Equity

Cash for any reason!  
\$0 closing cost options\*  
Close in 10 days or less\*\*

#### Debt Consolidation

Reduce high interest debt  
Lower your monthly  
payments by \$140†

#### Home Purchase

Dedicated loan consultants  
No Hassle loan process  
No origination fee options

#### Refinance

Lock in a low rate  
Customized loan solutions  
Less than perfect credit

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#### Testimonials

Jeff made the whole loan process very easy. He was very well informed...

-Travis S.

[Read more testimonials](#)

#### No Hassle loan process

Close your loan in  
ten days or less

#### How can we help?

Contact us  
[About Capital One Home Loans](#)

\* \$0 closing cost option not available with lowest rate and requires a minimum loan amount of \$50,000 with a \$25,000 minimum draw size for a Home Equity Line of Credit and minimum open amount of \$50,000 for a Home Equity Loan.

† Annual percentage rate effective as of 2/1/2008 and subject to change at any time. APR is based on a good credit history, \$200,000 loan amount, 80% combined loan-to-value ratio, and a 30 year fixed-rate first lien mortgage. Monthly payment for this example is \$1,170. Additional terms and restrictions apply.

\*\* 10-day claim calculated from receipt of completed application and all required supporting documentation.

† Lower average monthly payment claim based on first month's payment on non-purchase loans, exclusive of closing costs, that closed between 07/01/2007 and 12/31/2007. Actual savings vary. In some cases, refinancing to pay off existing debt may extend the term of the debt, possibly resulting in higher overall costs.

‡ Rate locks vary by product selected and are obtainable after underwriting and approval of the loan.

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### Home Loans

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### Customer Login

To enter our data system, please enter your loan number and password in the fields below. If you do not know this information, call (888) 497-6278 or e-mail your local consultant.

Loan number  
12008001231

Password



#### Questions?

Call toll-free at (888) 497-6278

#### Privacy and Security

This site uses Secure Sockets Layer (SSL) encryption for all customer data and has been authenticated by VeriSign.



Any information you provide will remain safe, secure, and confidential.

Review our privacy policy to learn how we protect your personal information.

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### Customer Login

Login not available past 90 days from date of disbursement.

Loan Number   
Password



# **EXHIBIT G**

4608 N. Cicero Avenue  
Chicago, IL 60639

For more information, contact your Sunbeam Agent.

## Capital

12500 Foster, Suite 251  
Overland Park, KS 66213

29  
1. Assessment Date  
closed:  
01/18/06  
disturbed:  
01/23/06

#### I. Summary of Borrower's Transactions

#### K. Summary of Seller's Transaction

100. Gross Amount Due From Borrower	400. Gross Amount Due To Seller
101. Contract sales price	401. Contract sales price
102. Personal property	402. Personal property
103. Settlement charges to borrower (line 1400)	403.
104.	404.
105. Existing loans	405.
Adjustments for items paid by seller in advance	Adjustments for items paid by seller in advance
106. City/town taxes	406. City/town taxes
107. County taxes	407. County taxes
108. Assessments	408. Assessments
109.	409.
110.	410.
111.	411.
112.	412.
120. Gross Amount Due From Borrower	420. Gross Amount Due To Seller
200. Amounts Paid By Or In Behalf Of Borrower	500. Reductions In Amount Due To Seller
201. Deposit or earnest money	501. Excess deposit (see instructions)
202. Principal amount of new loan(s)	502. Settlement charges to seller (line 1400)
203. Existing loan(s) taken subject to	503. Existing loan(s) taken subject to
204.	504. Payoff of first mortgage loan
205.	505. Payoff of second mortgage loan
206. Costs Paid by Seller	506.
207.	507.
208.	508.
209.	509.
Adjustments for items unpaid by seller	Adjustments for items unpaid by seller
210. City/town taxes	510. City/town taxes
211. County taxes	511. County taxes
212. Assessments	512. Assessments
213.	513.
214.	514.
215.	515.
216.	516.
217.	517.
218.	518.
219.	519.
220. Total Paid By/For Borrower	520. Total Reduction Amount Due Seller
300. Cash At Settlement From/To Borrower	600. Cash At Settlement To/From Seller
301. Gross Amount due from/borrower (line 120)	601. Gross amount due to seller (line 420)
302. Less amounts paid by/for borrower (line 220)	602. Less reductions in amt. due seller (line 520)
303. Cash <input type="checkbox"/> From <input checked="" type="checkbox"/> To Borrower	603. Cash <input type="checkbox"/> To <input checked="" type="checkbox"/> From Seller
	0.00

811. Title or Tax Service	to Capital One Home Loans	300.00
812. Tax Service fee	to Capital One Home Loans	200.00
813. Underwriting	to Capital One Home Loans	200.00
814. Processing fee	to Capital One Home Loans	200.00
815. Doc Prep	to Capital One Home Loans	10.00
816. Initial Flood Determination	to First American Flood Data Services	
817.		
900. Items Required By Lender To Be Paid In Advance		
901. Interest from 01/23/06 to 02/01/06 at \$ 06.5383 /day		778.84
902. Mortgage Insurance Premium for months to		
903. Hazard Insurance Premium for 1 years to LIBERTY INSURANCE AGENCY		495.00
904. years to		
905.		
1000 Reserve Deposited With Lender		
1001. Hazard Insurance 10 months to 123.75 per month		1,237.50
1002. Mortgage Insurance months to per month		
1003. City property taxes months to per month		
1004. County property taxes 7 months to 107.90 per month		751.30
1005. Annual assessments months to per month		
1006. months to per month		
1007. months to per month		
1008. months to per month		
1009. Aggregate adjustment:		371.19
1100. Title Charges		
1101. Settlement or closing fee to Capital One Settlement Services		275.00
1102. Abstract or title search to		
1103. Title examination to		
1104. Title insurance binder to Land America OneStop		30.00
1105. Document preparation to		
1106. Notary fees to		
1107. Attorney's fees to		
(Includes above items numbers:		
1108. Title insurance to Land America OneStop		972.00
(Includes above items numbers:		
1109. Lender's coverage \$ 351.14X.00 premium: 972.00		
1110. Owner's coverage \$		
1111. Payoff Delivery Fee CAPITAL ONE SETTLEMENT SERVICES		15.00
1112. Express Mail Charges Capital One Settlement Services		50.00
1113.		
1200. Government Recording and Transfer Charges		
1201. Recording fees: Deed \$ Mortgag \$ 120.50 Releases \$ 40.50		161.00
1202. City/County tax/stamps: Deed \$ Mortgag \$		
1203. State tax/stamps: Deed \$ Mortgag \$		
1204. Assignment: Mortgage/DOI Capital One Home Loans		25.00
1205.		
1300. Additional Settlement Charges		
1301. Survey to		
1302. Pest inspection to		
1303.		
1304.		
1305. Painting fees Capital One Home Loans		
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)		8,527.45

Ivelisse Rodriguez

Wifredo Rodriguez

## **EXHIBIT H**

**NOTICE OF RIGHT TO CANCEL**

4618 W. Dickens Avenue  
Chicago, IL 60639

(Identify the transaction)

LOAN NO.

2006001231

**Your Right to Cancel**

You are entering into a transaction that will result in a mortgage, lien or security interest on your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

(1) the date of this new transaction, which is 01/18/2006; or  
 (2) the date you received your new Truth in Lending disclosures; or  
 (3) the date you received this notice of your right to cancel.

If you cancel this new transaction, it will not affect any amount that you presently owe. Your home is the security for that amount. Within 20 calendar days after we receive your notice of cancellation of this new transaction, we must take the steps necessary to reflect the fact that your home does not secure the increase of credit. We must also return any money you have given to us or anyone else in connection with this new transaction.

You may keep any money we have given you in this new transaction until we have done the things mentioned above, but you must then offer to return the money at the address below. If we do not take possession of the money within 20 calendar days of your offer, you may keep it without further obligation.

**How to Cancel**

If you decide to cancel this new transaction, you may do so by notifying us in writing, at

Capital One Home Loans, LLC  
7311 W. 132nd Street Ste 300  
Overland Park, KS 66213

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of

01/21/2006

(Date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

**I WISH TO CANCEL**

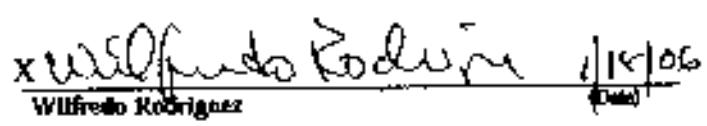
Consumer's Signature

Date

I Received Notice of Right to Cancel in Duplicate this Date January 18, 2006

  
 (Signature) Evelisse Rodriguez

1/18/06  
 (Date)

  
 (Signature) Wilfredo Rodriguez 1/18/06  
 (Date)  
Wilfredo Rodriguez

# **EXHIBIT I**

handwritten  
Frank P.  
Benzinger  
Kauf

01/19/2006 01:22 PAK

CAPITALONE SETTLEMENT

Q407/012

Loan Number G06001231

**SCHEDULE "A"  
PREPAYMENT PENALTY NOTE RIDER**

THIS PREPAYMENT PENALTY NOTE RIDER ("Rider") is made this 18th day of January 2006 and is incorporated into and shall be deemed to amend and supplement a Note in the amount of \$ 331,000.00 dated as even this herewith, executed by the undersigned ("Borrower") to ("Lender") secured by a Mortgage, Deed of Trust or Deed to Secure Debt ("Security Instrument") dated as even date herewith.

In addition to the agreements and provisions made in said Note, both Borrower and Lender further agree as follows:

Any provisions of said Note, or other such instruments executed in connection with said indebtedness which are inconsistent with the provisions of this Rider, including, but not limited to, monthly payments of principal and interest, maturity date and notice to the Borrower are hereby amended or negated to the extent necessary to conform such instruments to the provisions of this Rider.

The final Note payment shall be due and payable on February 1, 2036

The following notice is given to the Borrower as part of this loan contract pursuant to Federal regulations:

**PROVISIONS FOR PREPAYMENT PENALTY:**

Consecutive monthly principal and interest installments of \$ 2,432.21. They due on the 1st day of March 2006. Such payments to continue until maturity when the remaining principal balance and any unpaid interest thereon shall be due and payable. In the event full prepayment is made within three (3) years of the date of the first monthly payment a prepayment penalty in the amount of six (6) months interest on the remaining principal balance will be due.

IN WITNESS WHEREOF, Borrower has executed this Prepayment Penalty Note Rider.

Julio Rodriguez  
Julio Rodriguez

↓  
[REDACTED]

Wilfredo Rodriguez  
Wilfredo Rodriguez

[REDACTED]  
Prepayment Penalty Rider

## **EXHIBIT J**

Case 1:08-cv-01723 Document 19-2 Filed 05/12/2008 Page 23 of 29

## NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS \*

In accordance with Section 6 of Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2805) you are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, has been assigned, sold or transferred from Capital One Home Loans, LLC (Transferor) to HSBC Mortgage Services (Transferee).

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the security instruments, other than terms directly related to the servicing of your loan.

The effective date of this notice is 02/15/06.

TRANSFEROR SERVICER - The name of an individual employed by Capital One Home Loans, LLC

or a department where you may direct inquiries related to the transfer of the servicing rights of your mortgage is THE CUSTOMER SERVICE DEPARTMENT and the toll-free or collect call telephone number is (833) 718-4488.

TRANSFeree SERVICER - The name of an individual employed by HSBC Mortgage Services

new servicer or a department where you may direct inquiries related to the transfer of the servicing rights of your mortgage loan is CUSTOMER SERVICE DEPARTMENT and the toll-free or collect call telephone number is (833) 333-7023.

The date on which Capital One Home Loans, LLC

the transferor servicer will stop accepting payments on your mortgage loan is 03/02/06

and the date that HSBC Mortgage Services

the transferee, will begin accepting your payments is 03/03/06.

The transfer of servicing rights may affect the terms of or the continued availability of mortgage life or disability insurance or any other type of option insurance in the following manner:

You should take the following action to maintain coverage:

You should also be aware of the following information, which is set out in Section 6 of RESPA:

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by the original mortgage lender in a timely fashion may not be treated by the new loan servicer as late, and a late fee may not be imposed on you. If a mortgage loan servicer receives a qualified written request (as defined in Section 6 of RESPA) from a borrower for information concerning the servicing of the loan, the servicer must provide the borrower with a written response within 20 days of receipt of the request. Not later than 60 days after receipt of the request, the servicer must make any appropriate corrections to the borrower's account, and must provide the borrower with a written clarification regarding any dispute. During this 60-day period, the servicer may not provide information concerning an overdue payment to a consumer reporting agency.

Whoever fails to comply with the requirements set out in Section 6 of RESPA shall be liable to individuals for actual damages and, in the case of a pattern of noncompliance, shall be liable for an additional amount not to exceed \$1,000 per class member, not to exceed \$500,000 or 1% of the servicer's net worth, whichever is less. The court may also award attorneys fees. A transferor or transferee of servicing shall not be liable under this section if, within 60 days of discovering an error, and before the commencement of an action and receipt of written notice of the error from the borrower, the servicer notifies the borrower of the error and makes whatever adjustment is necessary.

\* (This notice must be delivered by the transferor servicer no less than 15 days before the effective date of the transfer of servicing rights, and must be sent by the transferee servicer no more than 15 days after the transfer. Delivery means placing the notice in the mail, first class postage prepaid, prior to 15 days before the effective date of transfer or prior to 15 days after the effective date of transfer. However, this notice may be sent within 30 days of the effective date of transfer of servicing rights if assignment, sale or transfer of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC) for conservatorship or receivership of the servicer, or an entity by which the servicer is owned or controlled.)

# **EXHIBIT K**

Date: February 15, 2006

To: Yvelisse Rodriguez  
Willredo Rodriguez  
4618 W. Dickens Avenue  
Chicago IL 60639

Re: 4618 W. Dickens Avenue  
Chicago, IL 60639

Dear Borrower(s),

We wish to advise you that effective March 3, 2006, the mortgage loan on your property referenced above was sold to HSBC Mortgage Services. This company has acquired your mortgage in a normal business transaction that does not affect the term or conditions of your loan.

All future mortgage payments should be mailed to:

HSBC Mortgage Services

636 Grand Regency Boulevard  
Brandon, FL 33510

All telephone inquiries should be directed to:

(800) 333-7029

You will soon receive instructions from HSBC Mortgage Services regarding the handling of future payments. Until then, include with your payment your existing loan number on your check and/or use the payment coupons enclosed.

In addition, please find enclosed a Notice of Assignment, Sale, or Transfer of Servicing Rights\* for you to retain for your loan document file.

Thank you for your consideration. We hope that this transfer has not caused any confusion or inconvenience for you. We appreciate your business. If we can be of any service to you in the future with your mortgage needs please contact our office and we will be happy to discuss them with you.

Sincerely,

Post Closing Department

# **EXHIBIT L**

**LAW OFFICES OF AL HOFELD, JR., LLC**  
**208 S. LaSalle Street, Suite #1650**  
**Chicago, Illinois 60604**  
**Phone - 312-345-1004**  
**Fax - 312-346-3242 (FAX)**  
**Email: [al@alhofeldlaw.com](mailto:al@alhofeldlaw.com)**

March 22, 2008

**BY REGULAR MAIL**

Capital One Home Loans, LLC  
7311 West 132<sup>nd</sup> Street, Suite 300  
Overland Park, Kansas, 66213

HSBC Mortgage Services, Inc.  
C/o registered agent,  
CT Corporation System  
208 South LaSalle Street, Suite 814  
Chicago, IL 60604

Mortgage Electronic Registration Systems, Inc.  
C/o registered agent,  
CT Corporation System  
208 South LaSalle Street, Suite 814  
Chicago, IL 60604

Re: Notice of TLA rescission, claim and lien for Ivelisse and Wilfredo Rodriguez, 4618 West Dickens Avenue, Chicago, Illinois, 60439; loan of January 18, 2006, originated by Capital One Home Loans

Ladies/Gentlemen:

The above clients hereby give notice that they rescind the above loan for noncompliance with the Truth in Lending Act.

Please be further advised that we have been retained by the above client to file suit against you and that we claim a lien upon said recovery for 1/3 or such amount as a court awards.

If you claim that the owner of the loan is other than yourself, please identify the owner pursuant to your obligation under 15 U.S.C. §1641(f)(2).

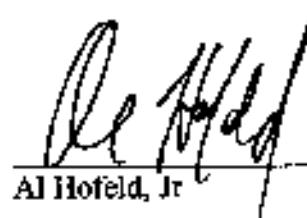
Finally, please provide a complete account history so that we may compute the appropriate tender amount.

Sincerely,

Al Hofeld, Jr.

Cc: clients

I, Al Hofeld, Jr., under penalty of perjury, as provided for by 28 U.S.C. §1746, certify that I had a copy of the foregoing document sent to the listed addressees on March 22, 2008.



Al Hofeld, Jr.